

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

T.J.H. and T.A.H, by and through their
Guardian and Parent, L.R.A.; D.J.M., by and
through his Guardian and Parent, J.M.; E.T.,
on her own behalf; and D.M., on his own
behalf,

Case No. 07-CV-2508 (PJS/RLE)

Plaintiffs,

v.

SHAKOPEE PUBLIC SCHOOLS
(INDEPENDENT SCHOOL DISTRICT
NO. 720); SHAKOPEE BOARD OF
EDUCATION; MARY ROMANSKY,
Chairperson of the Board of Education, in her
representative capacity; JOHN MCBROOM,
Superintendent, in his representative
capacity; KATHY MCKAY, Director of
Special Education for Shakopee Public
Schools, in her individual and representative
capacities; MINNESOTA RIVER VALLEY
SPECIAL EDUCATION COOPERATIVE
(JOINT POWERS SCHOOL DISTRICT NO.
993);¹

ORDER

SUSAN BRUNS, Chairperson, in her
representative capacity; DARREN KERMES,
Director, in his representative capacity;
COLLEEN TROSEN, Special Education
Coordinator, in her individual and
representative capacity; and BARBARA
BAHNSON, Special Education
Administrator, in her individual and
representative capacity,

Defendants.

¹The complaint identifies defendant Minnesota River Valley Special Education Cooperative as independent school district number 993. It is actually “joint powers” school district number 993. The official caption is hereby amended accordingly.

Margaret O'Sullivan Kane, KANE EDUCATION LAW, LLC, for plaintiffs.

Amy Mace and Isaac Kaufman, RATWIK ROSZAK & MALONEY, for defendant Shakopee Public Schools and related defendants.

Timothy J O'Connor, LIND JENSEN SULLIVAN & PETERSON, PA, for defendant Minnesota River Valley Special Education Cooperative and related defendants.

This matter is before the Court on the following submissions: (1) the parties' stipulation for dismissal of certain claims in plaintiffs' complaint [Docket No. 76]; (2) plaintiffs' motion to amend the complaint [Docket No. 31]; ² (3) the motion of defendant Minnesota River Valley Special Education Cooperative ("MRVSEC") and related defendants for separate trials [Docket No. 46]; and (4) the motion of defendant Shakopee Public Schools ("Shakopee") and related defendants for judgment on the pleadings or summary judgment [Docket No. 50].

A. Stipulation for Dismissal and Motion to Amend Complaint

The parties' stipulation for dismissal is directed at the original complaint in this matter. Pursuant to that stipulation, the Court dismisses certain claims, as set forth below. The Court's dismissal of these claims necessarily changes the content of plaintiffs' complaint. Accordingly, plaintiffs' pending motion to amend the complaint is now directed at a complaint that is no longer operative.

The Court believes that the best way to proceed at this point is to deny the plaintiffs' pending motion to amend the complaint without prejudice. If plaintiffs wish to move to amend

²Plaintiffs' motion to amend the complaint [Docket No. 31] was initially referred to Chief Magistrate Judge Raymond L. Erickson, who took it under advisement after a hearing on November 29, 2007. In light of the parties' stipulation for dismissal, the undersigned now rules on the motion. Defendant MRVSEC's motion to compel discovery and require plaintiffs to amend their complaint to include their full names [Docket No. 25], which was also argued before Judge Erickson on November 29, 2007, remains under advisement with him.

the complaint, as that complaint has now been modified by this order, plaintiffs should file a new motion for leave to amend along with a new proposed amended complaint that clearly sets forth the claims that plaintiffs still intend to pursue.

B. MRVSEC's Motion for Separate Trials

MRVSEC moves under Rule 42(b) of the Federal Rules of Civil Procedure for the claims of each plaintiff to be tried separately. In particular, MRVSEC emphasizes that the claims of plaintiff T.J.H. differ significantly from the claims of the other plaintiffs and should therefore be severed for trial.

With respect to plaintiff T.J.H., the Court finds that his claim under the Individuals With Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400-50, is sufficiently unlike the rest of the claims in this case that his IDEA claim should not be part of this lawsuit. On its own motion, the Court severs plaintiff T.J.H.'s IDEA claim (Count 4 of the complaint) under Rule 21(b) of the Federal Rules of Civil Procedure. That claim will proceed in a separate action in this Court; T.J.H.'s other claims remain in this action.

With respect to the remaining plaintiffs and claims, the Court finds that it would be premature to decide at this point how to try this case. That decision should await the conclusion of discovery and the resolution of all non-dispositive and dispositive motions. Accordingly, the Court denies without prejudice MRVSEC's motion to sever the plaintiffs' non-IDEA-related claims.

C. Shakopee's Motion for Judgment on the Pleadings or Summary Judgment

The Court denies Shakopee's motion for judgment on the pleadings. As the Court discussed at the hearing on that motion, Shakopee has not clearly established that there are no material issues of fact and that it is entitled to judgment as a matter of law. *See Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999).

The Court also denies without prejudice Shakopee's motion for summary judgment. The disputes in this case are extremely complicated and fact-intensive, and the Court finds that it would be prudent to allow the parties to complete discovery, which is scheduled to close on April 27, 2008. *See* Pretrial Order Oct. 18, 2007 [Docket No. 20]. After discovery has closed, Shakopee (or any other party) may move for summary judgment on the basis of a fully developed factual record, saving the Court and the parties the need to speculate what is likely to be revealed at future depositions or in response to future discovery requests.

ORDER

Based on the foregoing and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. Plaintiffs' motion to amend the complaint [Docket No. 31] is DENIED WITHOUT PREJUDICE.
2. Defendant MRVSEC's motion to sever [Docket No. 46] is GRANTED IN PART and DENIED IN PART as follows:
 - a. The claims of plaintiff T.J.H. against Shakopee and related defendants for violations of the Individuals with Disabilities Education Act in Count Four of the complaint are SEVERED. The Clerk of Court is directed to

establish a new docket number for the resulting case, to docket this order as the first entry in the newly created case, and to attach all documents filed in this case up to the date of this order to that first docket entry. The plaintiff in the newly created case is T.J.H., by and through his guardian and parent, L.R.A. The defendants in the new case are: Shakopee Public Schools (Independent School District No. 720); Shakopee Board of Education; Mary Romansky, Chairperson of the Board of Education, in her representative capacity; John McBroom, Superintendent, in his representative capacity; and Kathy McKay, Director of Special Education for Shakopee Public Schools, in her individual and representative capacities. Plaintiff T.J.H. will be required to pay a filing fee for the new case pursuant to 28 U.S.C. § 1914 on or before March 21, 2008.

- b. MRVSEC's motion is DENIED WITHOUT PREJUDICE in all other respects.
3. Defendant Shakopee's motion for judgment on the pleadings or summary judgment [Docket No. 50] is DENIED as follows:
- a. To the extent that Shakopee moves for judgment on the pleadings, the motion is DENIED.
 - b. To the extent that Shakopee moves for summary judgment, the motion is DENIED WITHOUT PREJUDICE to renewal after the close of discovery and in accordance with the pretrial order.

4. Pursuant to the parties' stipulation of dismissal [Docket No. 76], the following claims and requests for relief in plaintiffs' complaint [Docket No. 1] are DISMISSED WITHOUT PREJUDICE and without costs or disbursements to any party:
 - a. Plaintiffs' claims under Count One for violations of the First, Fifth and Fourteenth Amendments pertaining to freedom of association and freedom from self-incrimination;
 - b. Plaintiffs' claims under Count Two for violations of their Fourteenth Amendment Due Process rights for restricting their right to associate with peers and classmates;
 - c. Plaintiffs' claims under Count Three pursuant to 42 U.S.C. § 1983 for violations of the rights to freedom of association and freedom from self-incrimination;
 - d. Plaintiffs' claims under Count Six pursuant to the Americans with Disabilities Act pertaining to restrictions upon associations;
 - e. Plaintiffs' claims for relief set forth in Paragraphs 4 and 5 of their Prayer for Relief, as they relate to any relief sought for violations of Plaintiffs' rights to freely associate pursuant to the First and Fourteenth Amendments, and for violations of Plaintiffs' rights to be free from self-incrimination pursuant to the Fifth and Fourteenth Amendments; and

- f. Plaintiffs' claims, as set forth in Paragraph 10 of their Prayer for Relief, for a preliminary and permanent injunction to enjoin Defendants from denying Plaintiffs their rights to access to counsel and parents in any interviews or interrogations.

Dated: March 14, 2008

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge